IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/01/2003

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION NO.42702 of 2002
and W.P.Nos. 42311, 42665 and 43881 OF 2002
and
W.P.M.P.Nos.62961, 62448, 62913 and 64430 of 2002

M.G.Rajendran,
Proprietor Vicram Enterprises. .. Petitioner in WP.42702/2002.

M/s.Glowide Trade Wings,
represented by its Proprietor,
M.Moosa .. Petitioner in WP.42311/2002.

M/s.Basmma International,
represented by its Proprietor,
A.Dlhilli Bhaskar .. Petitioner in WP.42665/2002.

M/s.A.A.Impex Company,
represented by its Proprietrix
Anu Ambraile .. Petitioner in WP.43881/2002.

-VS-

1. The District Forest Officer,
Chengalpattu Division,
Kancheepuram.

2. The District Forest Officer,
Nellore District,
Andhrapradesh.
(Now camping at 1, Rizwan Road,
Madhavaram, Chennai-60) .. Respondents in
all cases.

Petitions filed under Article 226 of the Constitution of India
for the issue of writs of mandamus as stated therein.

For petitioner in : Mr.G.R.Swaminathan

W.P.Nos.42702 & 42311/2002

For petitioner in
W.P.Nos.42665 & 43881/2002 : Mr.T.Saikrishnan.

For 1st respondent in all : Mr.V.S.Sethuraman,
cases. Special Government Pleader.

For 2nd respondent in all cases: Mr.R.Thyagarajan,
Senior Counsel, for
Mr.M.Ravi

:ORDER

While the first two Writ Petitions were heard and orders were reserved on 30.12.2002, as the remaining two writ petitions were not listed for hearing, it was listed for hearing on 10.1.2003 and all the cases were heard together. All these writ petitions arise out of common factual background and hence heard and disposed of together.

2. The petitioners claim to be authorised permit/licence holders under Tamil Nadu Timber Transit Rules and registered under the said Rules. Therefore, they are entitled to carry on business in dealing with Timber and they are in lawful trade. They are also entitled to be in possession of and to deal with all the permitted categories of timber, wood including Red Sanders Wood (R.S.W.). They also claim to be lawfully operating within the jurisdiction of Tamil Nadu and they are not procuring any material from the State of Andhra Pradesh. But the various officials belonging to Andhra Pradesh Government suddenly descended on the petitioners and carried out an illegal raid on the premises belonging to the petitioners without any lawful authority or jurisdiction and without any permission or authority from the Tamil Nadu Government.

3. The above is factual background on which the petitioners have come before this Court. The respective counsel for the petitioners have submitted that the petitioners are carrying on their lawful trade strictly in terms of the permits/licence held by them and that the apprehension expressed by the Andhra Pradesh Government officials as though the stock available with them have been illegally transported from the Andhra Pradesh, has no basis at all. The Andhra Pradesh officials have no jurisdiction, legal or territorial to barge into their premises nor have any right to seal the premises or the stock of wood in their possession. If any action is to be taken it could be taken only by the Tamil Nadu officials. Reference is made to the judgment of a Division Bench of this Court in Writ App eal No.1926 of 2000 dated 21.03.2001, in which also, the seizure of R.S.W. was effected by the Andhra Pradesh officials. Reliance is placed on the observation that the Andhra Pradesh Officials have to hand over the stock to the Tamil Nadu Forest officials.

4. In the counter filed by the first respondent/Tamil Nadu Forest officials, in W.P.No.42311 of 2002, it is contended that the petitioner was issued with a Possession Licence to possess 16339 K.Gs., of R. S.W. The property mark is also renewed for the year 2002-2003 after due verification of the stocks by the concerned Ranger. It is further stated that the second respondent, namely, Officials belonging to the Andhra Pradesh Government approached the respondents and informed that R.S.W. has been smuggled from the State of Andhra Pradesh and kept in three places including that of the petitioners. They sought for the assistance of the first respondent for inspection. Based on their request the first respondent being the Licensing Authority attempted to contact the petitioner to make arrangements for inspection. But for reasons best known to the petitioner, failed to turn up for inspection. Therefore, there being no other alternative the godown was broken open in the presence of the first respondent along with the second respondent and police officials. It was found that though Possession Licence was issued only for a quantity of 16339 K.Gs., the quantity available in the godown was 28000 K.Gs. The respondent would further state that the legality of the excess would be verified in due course and necessary action will be taken as per the procedure and in accordance with law. The first respondent is entitled to inspect the premises in terms of the Tamil Nadu Forest Act, 1882 and Tamil Nadu Timber Transit Rules, 1969. Any action to be taken thereon will be done only in terms of the said provisions. It is further stated that no wood had been removed from the godown and only a Mahazar was prepared. The legality of the stock will be checked with the relevant documents. The present writ petition was also premature and the petitioner was not entitled to stall the inspection proceedings.

5. In the counter filed by the second respondent/officials of the Andhra Pradesh Forest Department, it is stated that the Forest Range Officer, happened to seize two vehicles which were illicitly transporting R.S.W. from Nellore District (A.P.) and a case had been registered before the Court of Judicial Magistrate, Venkatagiri, Andhra Pradesh. Based on the information furnished by the persons who were taken into custody, it came to the light that several other persons were also involved in the illicit transit from the Reserved forest area in Andhra Pradesh and in the illegal possession of few individuals at Tamil Nadu. On 23.11.2002, Divisional Forest Officer contacted the Chief Conservator of Forest, Chennai, and conveyed the information regarding the clandestine operation of illicit transport and requested him to do the needful. On his advice, he met the District Forest Officer, Kancheepuram, and a team of Tamil Nadu Forest Officials were then instructed to assemble. It was decided to conduct the search operations in the premises belonging to the petitioners. In the case of the petitioner in W.P.No.42311 of 2002, the search operations were conducted on 25.11.2002 in the presence of Panchayatdars. Even though the petitioners were informed about the proposed operations to be conducted at 9.00 A.M. on 25.11.2002, neither the petitioner nor any of his representatives turned up. In the counter, further details have been given as regards the facts relating to the inspection and according to the second respondent, a total quantity of 28.722.4 K.Gs. Of Red Sanders worth about one crore rupees were found to be concealed in the premises belonging to the petitioner and many of them did not bear any property mark or the hammer marks of the Government of Andhra Pradesh

or of Tamil Nadu except 47 pieces weighing 890 K.Gs., in total. Even those materials which had the property marks did not have the hammer marks of the Department. Therefore, according to the respondent, the possession of the stock by the petitioner was illegal and violative of the provisions of the Tamil Nadu Timber Transit Rules, 1968.

6. It is further submitted by the second respondent that it is not the second respondent alone who has conducted the inspection on his own. But the District Forest Officer, Kancheepuram having considered the request of the Andhra Pradesh officials and on satisfying himself that there was a prima facie case for investigation, had ordered the search and the search operation was conducted by following the Rules. The motives attributed as against the respondent that the search was conducted in order to help his business rivals and competitors namely, Andhra Pradesh Forest Development Corporation, is baseless. During the search, certain other materials have also come to light like fake number plates of vehicles, 32 seals in the names of various Companies, Police Officials and individuals, stencil cutting of various companies, which would clearly show that the petitioner has been carrying on illegal, clandestine and illicit transactions. The attitude on the part of the petitioners to escape from the consequences of their own illegal actions, cannot be sustained. Similar operations were carried on in the premises of the other petitioners also.

7. Mr.R.Thyagarajan, learned Senior Counsel appearing for the second respondent/A.P. Officials, contends that there is a systematic illegal transport of the precious R.S.W. from Andhra Pradesh to Tamil Nadu and the Andhra Pradesh Government had expressed deep concern over this issue. He would further submit that there was little or no growth of R.S.W. in Tamil Nadu. It was mainly available only in the State of Andhra Pradesh. Learned Senior Counsel further argues that it may not be competent for the Andhra Pradesh officials to invoke the provisions of the Tamil Nadu Forest Act. However, it cannot be contended that a neighbouring State Government is without any remedy or right to bring to the notice of the local State Government, the fact of such massive illegal transit and to take action accordingly. On facts, learned Senior Counsel submits that most of the stocks in the hands of the petitioner did not even bear the seal or the hammer marks of the authorities of either the Tamil Nadu Government or Andhra Pradesh Government. It can be easily established that the entire possession was illegal and that origin of the wood was from the Andhra Pradesh and that they have been illicitly transported into Tamil Nadu. The action of the petitioners are highly illegal and if allowed to go on unchecked, would result in grave loss to the Andhra Pradesh State not only valuewise but also damage to the forest ecology in Andhra Pradesh.

8. Mrs. Selvi George, appearing for the Tamil Nadu Government would submit that their officials had received complaints from the Andhra Pradesh officials and when checking was sought to be done, there was no proper co-operation from the petitioners and hence action had to be taken as provided under the Tamil Nadu Timber Transit Rules and the petitioners have no

right to prevent them from discharging their duties.

9. When the writ petitions were admitted, I had granted a restricted interim order directing the respondents not to remove the stocks from the custody of the petitioners until further orders. As a result, as on date, stock is retained in the godown of the petitioners and under the seal of the Forest officials.

10. I have considered submissions of both sides. Whether the petitioners have the required permit/licence to deal with R.S.W., whether the stock in their possession was legal and in terms of the said permits and whether they bear the seal and hammer marks of the Government, are all issues which have to be duly inspected and checked by both Tamil Nadu and Andhra Pradesh Government officials. However, a prima facie case is made out from the counter filed by both respondents to the effect that the possession by the petitioners are not free from doubt. In respect of the petitioner in w.P.No.42311 of 2002, it is seen that as against the permitted limit to possess 16399 K.Gs. of R. S.W., the quantity available in the godown was more than 28000 K.Gs. It is further stated that except few logs which are negligible, most of the logs did not bear the hammer marks. Therefore, considering that proper grounds are made out for taking further action against the petitioners, the Tamil Nadu Government has every right to take action against the petitioners subject to following the procedure prescribed under the Act and Rules. The Government will also have the right to seize and confiscate unaccounted wood and also wood without proper official seal or hammer mark. Thereafter, if the petitioners are aggrieved by any such proceedings, it is open to them to pursue their further remedies as provided under Chapter V and VI of the Tamil Nadu Forest Act. The petitioners have now approached this Court contending that the Andhra Pradesh officials have no jurisdiction to conduct any inspection or raid on their premises. It is contended on behalf of the petitioners that it is only the Tamil Nadu Forest Officials who have the right to conduct any inspection and take any action thereon in terms of the Tamil Nadu Act and Rules and Andhra Pradesh Officials can have no role to play in such action.

11. Therefore, bearing in mind the stage at which the petitioners have approached this Court, namely, inspection, verification and sealing of the premises during the period of verification, the scope of the writ petitions is limited only to consider the jurisdictional issue and further course of action. It is not the case of the Andhra Pradesh Government that they are taking any direct action or that they are entitled to take action. They are taking action only through the Tamil Nadu Government after having approached the Principal Conservator of Forests, Tamil Nadu. Inspection and verification etc. are to be done only by the Tamil Nadu officials accompanied by them. They are only jointly involved in the verification of the stock as their interest is very much affected. I do not think that the joint involvement of Andhra Pradesh officials in the process of verification and checking could be termed as illegal. It must be remembered that the provisions of the Indian Forest Act, 1927 is a Central Act, passed for consolidating the law relating to the forest and transit of the forest produce. The subject of "Forest" is in fact included in the Concurrent list

of VII Schedule to the Constitution of India and not exclusively in the State list. Inter-State trade and commerce are Union subjects under the Union list. It is also pertinent to bear in mind that under Section 85-A of the Indian Forest Act, 1927, it is clearly stated that nothing in the said Act shall authorise a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned. Therefore inter-state control and supervision is a must to eliminate illicit transport from one State to another.

12. Consequently, even though the petitioners are governed by the provisions of the Tamil Nadu Act and Rules and in terms of the licence/permit issued to them, it cannot be contended that a neighbouring State Government has no right to bring to the notice of the local Government, a matter what the neighbouring State perceives it to be the violation of their rights and the Rules and Regulations framed by them in dealing with the transit of forest produce or any issue which may arise in relation to inter-State trade and commerce. The Andhra Pradesh Government has also prescribed similar Rules namely, The Andhra Pradesh Sandalwood and Red Sanders Wood Transit Rules. Therefore, I am unable to accept the contention of the petitioners that the Andhra Pradesh Government officials can have no role to play. It is true that they cannot take direct action against the petitioners or invoke the provisions of the Tamil Nadu Act and Rules. But their right to approach their counter-part in Tamil Nadu and to request them to take appropriate action, cannot be denied. It is also necessary for them to be satisfied that that the action taken by the Tamil Nadu officials are in conformity with the statutory provisions and about the genuineness of the stocks retained by the petitioners who are alleged to have illicitly transported stock from the Andhra Pradesh. They have approached the Tamil Nadu Government on the basis of information obtained by them. Therefore, they should be permitted to verify the genuineness of the various claims by the petitioners. This is very essential in order to eliminate very serious allegations by officials of one State Government against what is happening in another State. The complaining State should also be satisfied about the actual facts. Therefore, I am inclined to hold that the involvement of the Andhra Pradesh officials in the process of inspection and verification of the stock by the Tamil Nadu Officials cannot at all be objected to. It is however, made clear that their involvement will be limited to note down all the details and the outcome of the inspection and verification. All the required details must be made available to them. But they cannot themselves seek to exercise any positive function of removing the materials into their possession or to take any coercive proceedings under the Tamil Nadu Forest Act or the Rules. They will also be entitled to file their objections, comments etc. with the Tamil Nadu Officials regarding the facts gathered during the inspection.

13. Reference was made to the judgment in Writ Appeal No.1926 of 20 00 but the same is of no help to the petitioners. K.Govindarajan,J. while disposing of W.P.No.6961 of 2000 though held that the Andhra Pradesh officials may not have any jurisdiction to have seized the goods within the

State of Tamil Nadu, however, held that the goods seized by them from the petitioners were not supported by any proper licence by the petitioners. Therefore, the learned Judge concluded that the possession by the petitioners has to be construed as illegal. The learned Judge consequently directed the Andhra Pradesh officials to hand-over the materials to District Forest Officer, Chengalpattu Division. An appeal was filed by the writ petitioner and the Division Bench while disposing of the Writ Appeal, did not interfere with the conclusions of the the learned single Judge. The final directions were only modified to the extent that the Andhra Pradesh authorities have to comply with the directions of the learned single Judge and after custody of the wood was entrusted to the Tamil Nadu officials within a prescribed period of one month, the Tamil Nadu officials should deal with the application filed by the petitioner for renewal of the licence. The said directions were issued only with reference to the facts of that case in which neither the learned single Judge, nor the Division Bench go into the issue as to whether the stock held by the petitioner was illegal or whether the stock had been procured from Andhra Pradesh. Therefore, the reference to the said judgment can have no relevance to the facts of the present case.

14. In the result, the immediate concern is the custody of the stock now kept under the godown of the respective petitioners. Bearing in mind that it will not be proper to allow the petitioners to retain possession of the stocks which they are not able to properly account for and also considering the serious allegations made in the counter of the second respondent, the Andhra Pradesh Government with reference to certain facts relating to the absence of hammer marks and the existence of the materials like fake number plates of the vehicles, seals in the names of the various companies, police officials etc., which allegations, if true, are very serious in nature, I am inclined to pass the following order:-

(i) Inspection of stocks shall be carried out only by the Tamil Nadu Forest officials in the presence of Andhra Pradesh Government officials. No inspection shall be done in the absence of Andhra Pradesh Government officials.

(ii) The Andhra Pradesh Government officials may render assistance to the Tamil Nadu officials in the matter of identifying items which are alleged to be illegally transported and also the genuineness of the seals/marks on the pieces.

(iii) All the unaccounted and the doubtful wood/stock shall be removed from the possession of the respective petitioners and shall be kept under the possession and custody of Tamil Nadu Forest officials in their official godown.

(iv) The petitioners will be allowed to retain possession of only such of those stocks which are found to be legal. It is not sufficient for the petitioners merely to show that the stock in their hands is within the permitted maximum limit and to contend that only stocks in excess of the said permit/limit alone can be removed. Even within the permitted limit, they have to satisfy the authorities about the sources of their purchase and the purchase being supported by legal and genuine documents, seals and hammer marks of the respective Governments. Any such illegal or doubtful stock shall also be removed and retained in the possession of the Tamil Nadu Government.

(v) After the removal of such illegal or doubtful stocks as mentioned

in clause (iii) and (iv) above, further proceedings shall be taken by the Tamil Nadu Government officials in terms of the provisions of the Act and Rules, if there is any violation and evidence of illegal transport from Andhra Pradesh. Such of the stock if finally adjudicated as having been illegally transported from Andhra Pradesh, will be confiscated and handed over to the Andhra Pradesh Government officials.
(vi) Appropriate action has to be taken also by informing the Police if the allegations of the presence of fake number plates of vehicles, seals of various companies, Police and other Officials are found to be true revealing clandestine or fraudulent activities.

15. It is needless to mention that the complaints as above in these writ petitions are recurring in the past few years and such complaints/incidents could have been avoided if only the officials belonging to the Forest Department and Check-Post Officials of both States had been vigilant in performing their duties by effective checking of the vehicles on the border roads.

16. Subject to the above observations in para 14 above, the writ petitions are ordered accordingly. No costs. Connected miscellaneous petitions are closed as unnecessary.

Index: Yes.
Internet: Yes.
sai/-

To

1. The District Forest Officer,
Chengalpattu Division,
Kancheepuram.

2. The District Forest Officer,
Nellore District,
Andhrapradesh.
(Now camping at 1, Rizwan Road,
Madhavaram,
Chennai-60)